IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.837 OF 2004

UTI Bank Limited .. Appellant

versus

Chetan Sudhirchandra Desai & Anr.. Respondents

...

Mr.Kafil Khan for the appellant.

Mr.A.M. Shringarpure, APP for the State.

CORAM : V.M. KANADE, J

DATED : 29th November 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the State. None appears for the respondent no.1 though he is served.

2. Initially, notice before admission was issued by order dated 1st July 2004 by this Court. The respondent could not be served and therefore, permission was granted to the appellant to issue a public notice. Accordingly, public notice was

published in Free Press Journal, Bombay dated 17th April 2004. Thereafter, again public notice was issued on 22nd July 2004. Inspite of issuing public notices in the Free Press Journal, respondent no.1 has not appeared before this Court.

3. The appellant UTI Bank has filed this appeal challenging the order passed by 26th Court, Borivali. By the said order, a complaint filed by the appellant was dismissed for default by order dated 29th April 2003. It is submitted that the complainant has remained absent only on the said date and has been pursuing the matter diligently from the date of filing of the complaint.

4. In my view, this is a fit case where the order of dismissal for default should be set aside. The impugned order dated 29th April 2003 is set aside and quashed. The matter is remanded back to the Court of Metropolitan Magistrate, 26th Court, Borivali, Mumbai with the direction to decide the criminal case expeditiously on merits.

5. Appeal is allowed in the above terms.

6. Certified copy expedited.

V.M. KANADE, J